

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 1 of 10 PageID #: 29

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF INDIANA

McKINLEY, INC. )  
Plaintiff, )  
v. ) No.1:12-cv-0299 SEB-MJD  
SS MANAGEMENT GROUP, INC)  
DAVID ASH, )  
Defendants. )

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Defendants, SS Management Group, Inc., et. al., by and through their attorney Jennifer L. Graham, file this Answer, Affirmative Defenses and Counterclaim.

ANSWER

1. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.
2. Admit.
3. Admit in part, deny in part. Defendant does manage several properties in Indiana.
4. Admit.
5. Admit. His proper last name is Ashamalla.
6. Admit.
7. Admit.
8. Deny.

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 2 of 10 PageID #: 30

9. Deny.

10. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

11. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

12. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

13. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

14. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

15. Admit.

16. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

17. Admit.

18. Admit.

19. Admit.

20. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

21. Deny.

22. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

23. Admit.

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 3 of 10 PageID #: 31

24. Admit.

25. Admit.

26. Admit.

27. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

28. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

29. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

30. Deny.

31. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

32. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

33. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

34. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

35. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

36. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 4 of 10 PageID #: 32

52. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

53. Deny

54. Deny

55. Deny

56. Deny

57. Deny

58. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

59. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

60. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

61. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

62. Deny

63. Admit

64. Admit

65. Admit

66. Admit

67. Admit

68. Deny

69. Deny

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 5 of 10 PageID #: 33

70. Deny

71. Deny

72. Admit

73. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

74. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

75. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

76. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

77. Deny

78. Deny

79. Deny

80. Deny

81. Deny

82. Deny

83. Deny

84. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

85. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 6 of 10 PageID #: 34

86. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

87. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

88. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

89. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

90. Deny

91. Deny

92. Deny

93. Deny

94. Deny

95. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

96. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

97. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

98. Deny

99. Deny

100. Deny

101. Deny

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 7 of 10 PageID #: 35

102. Deny

103. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

104. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

105. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

106. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

107. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

108. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

109. Deny

110. Deny

111. Deny

112. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

113. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

114. Defendant neither admits nor denies the allegation but leaves Plaintiff to its proof.

115. Deny

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 8 of 10 PageID #: 36

116. Deny

117. Deny

118. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

119. Defendant neither admits nor denies the allegation but leaves

Plaintiff to its proof.

120. Deny.

121. Deny.

122. Deny

123. Deny

#### AFFIRMATIVE DEFENSES

1. Any published statements by Defendants are true.

2. Plaintiff acted negligently in the mismanagement of Defendant's properties causing great diminution to the value of the properties.

3. Plaintiff acted recklessly in the mismanagement of Defendant's properties causing great diminution to the value of the properties.

4. Plaintiff acted willfully and wantonly in the mismanagement of Defendant's properties causing great diminution to the value of the properties.

#### COUNTERCLAIM

1. McKinley was entrusted with the proper management of the properties.

2. McKinley's trust was placed by the Trustee acting in his representative capacity of the estate.

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 9 of 10 PageID #: 37

3. McKinley violated that trust including but not limited to the following:

- A: Failing to maintain the common elements of the properties;
- B: Failing to maintain the properties' rental units;
- C: Failing to repair the properties when they knew of the need and were authorized to repair the properties;
- D: Committed waste on the properties;
- E: Charged for services it did not perform;
- F: Took steps to move out tenants that had valid leases;
- G: Failed to rent apartments that were available for rent;
- H: Mischaracterized financial statements to the Receiver.

4. McKinley's actions caused substantial harm to the value of the

property.

5. McKinley is liable to Defendant for those damages.

WHEREFORE, Defendant prays the Court enter a judgment in favor of Defendant to compensate Defendant for said loss, including its attorneys fees as well as any other remedy the Court deems just.

Respectfully submitted,

/s/Jennifer L. Graham  
Jennifer L. Graham, 8323-49

Case 1:12-cv-00299-SEB-MJD Document 3-1 Filed 03/20/12 Page 10 of 10 PageID #: 38

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by the Court's electronic service system on this 20th day of March 2012.

Pfenne P. Cantrell: pcantrell@k-glaw.com  
KIGHLINGER & GRAY, LLOP

Daniel W. Linna Jr.: dlinna@honigman  
HONIGMAN MILLER SCHWARTZ AND COHN LLP

ss/Jennifer L. Graham  
Jennifer L. Graham, 8323-49